



THE STATE BAR OF CALIFORNIA

84th Annual Meeting

Program 99

Ethics and Loan Modification

Saturday, September 17, 2011

8:30 a.m.-10:00 a.m.

**Sponsored by the Standing Committee
on the Delivery of Legal Services**

The State Bar of California and the Office of Section Education and Meeting Services are approved State Bar of California MCLE providers.

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Ethics and Loan Modification**

*Everything you always wanted to know about
loan modification but were afraid to ask*

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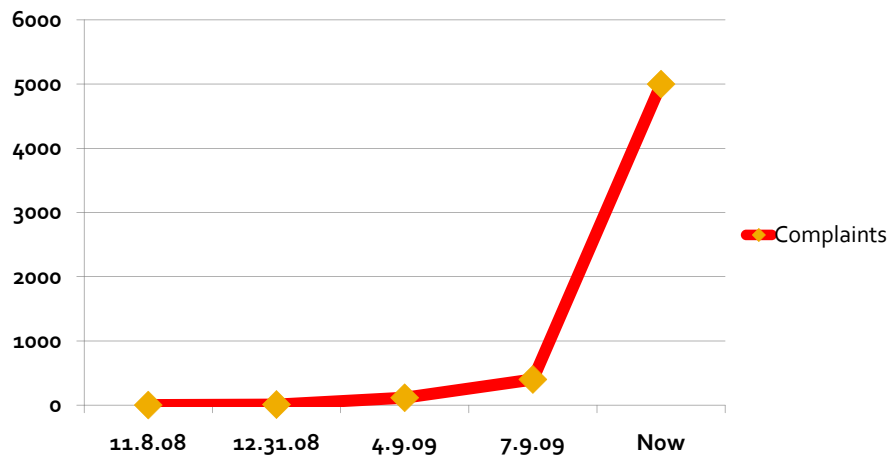
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The Problem As Reported to the State Bar

Rising Number of Complaints



The Problem As Reported to the State Bar

- Substance of Complaints
Examples and Violations

The State Bar's Response

Date	Loan Mod Team
4/09	3 Attorneys + Supervisor+ 6 Investigators (Loan mod & Regular Cases)
9/09	Another Attorney & 2 more investigators (Loan mod cases only)
2/11	10 .5 attorneys and 21 investigators

- Interagency Cooperation
 - Dept. of Real Estate , Dept. of Justice, Fed. Trade Com., CA DOJ, District Attorneys, law enforcement
 - 2 task forces – So. Cal and Federal
 - Assist “observe and consult” in search warrant procedures

California's Response

- Prior to October 11, 2009 – Attorneys were exempt from Foreclosure Consultants Act, and were the only people able to collect advance fees for loan modification other than Real Estate Brokers with an advance fee agreement approved by the Dept. of Real Estate (hard to get)
- October 11, 2009 – passage of SB 94, now Civil Code 2944.7 and corresponding ethical section B&P Code section 6106.3

California's Response

- **CC 2944.7** – basically – no one can collect advance fees for loan modifications in California
 - “Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.”

California's Response

- Unlawful –public offense punishable by fine not exceeding \$10,000 or imprisonment not exceeding one year or both. But if a business, then fine not to exceed \$50,000.
- 6106.3 – “It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of section 2944.6 or 2944.7 of the Civil Code.”

California's Response

Fact patterns of SB94 violations

- Outright collection of advance fees – some continue to do
- Calling advance fees “retainer”
- Monthly billing before all services rendered
- Collecting advance fees but putting them in a client trust account until work performed
- Charging for work in stages
- Real case pending – divided into:
 - Perform financial analysis of client's case
 - Formulate theory of Client's Case for Loan

California's Response

Modification

- Prepare Loan Modification Package on behalf of client
- Prepare a demand letter directed to lender
- Seek resolution through Loss Mitigation Negotiator
- Escalate Loan modification case to team lead, upper level management and executive officers, as needed
- Apprise client of progress
- Provide detailed explanation of modification plan approved by lender

California's Response

If litigation leads to loan modification;
this is **NOT** seen as violation by
State Bar

State Bar Remedies

- Petition for Inactive Enrollment under B&P 6007(c)
 - Expedited proceeding, not favored by State Bar Court judges, declaration, no live testimony
 - “substantial threat of harm to the interest of the attorney’s clients or to the public”
- If granted - procedure
 - 11 petitions filed since inception of loan mod team – 11 granted – 9 of those attorneys then surrendered their licenses, 1 settled for substantial actual suspension and 1 trial pending

State Bar Remedies

- Resignation with charges pending
 - But there is a problem – restitution
- Stipulated Disbarment
- Notice of Disciplinary Charges – clear and convincing evidence
 - Leads to trial – so far each attorney facing trial has defaulted and received disbarment from the State Bar Judge
 - About 6 contested trials pending presently

- **Business & Professions Code Section 6190-**

- Assumption of Jurisdiction over Law Practice by Superior Court

State Bar Remedies

- 20 attorneys have surrendered their licenses when faced with 6607 inactive and/or evidence obtained
 - Over 40 attorneys have received discipline of substantial actual suspension and a handful received lighter discipline

Ethical violations involved in cases investigated/prosecuted

- Payment of referral fees (RPC1-320(B) – A lawyer may not pay a referral or marketing fee to a foreclosure consultant or other person for referring distressed homeowners to the lawyer – also B&P 6151 &6152 prohibit running and capping

Ethical violations involved in cases investigated/prosecuted

- Forming partnership with non-atty (RPC 1-310) – a lawyer may not form a partnership or joint venture with a foreclosure consultant or other non-lawyer if any of the activities of the business would involve providing legal services. A lawyer may not, under the guise of serving as in-house counsel for a foreclosure consultancy business, perform legal services for a distressed homeowner.

Ethical violations involved in cases investigated/prosecuted

- Aiding and Abetting UPL (RPC 1-300(A) – a lawyer may not aid a foreclosure consultant or anyone else in the unauthorized practice of law.
- Lending atty name to non-atty (B&P 6105)
- Sharing legal fees with non-atty (RPC 1-320) – A lawyer may not directly or indirectly split any attorney's fees that the lawyer earns from a distressed homeowner client with the foreclosure consultant or any other non-lawyer

Ethical violations involved in cases investigated/prosecuted

- False advertising (RPC 1-400) – A lawyer must not use communications which contain guarantees, warranties, testimonials without disclaimers, or use emotional appeals
- Solicitation of clients (RPC 1-400) – a lawyer may not contact in person or by telephone a distressed homeowner referred to the lawyer by a foreclosure consultant or someone else unless the lawyer has a family or prior professional relationship with the homeowner.

Ethical violations involved in cases investigated/prosecuted

- Failing to Competently Perform (RPC 3-110(A) – a lawyer may not intentionally or recklessly fail to perform legal services with competence. A lawyer has a duty to supervise the work of subordinate attorneys and non-attorney employees or agents.
- Failing to Communicate with Client or advise Client of significant event (B&P 6068(m) – A lawyer shall respond promptly to reasonable status inquiries of clients and keep clients reasonably informed of significant developments in matters

Ethical violations involved in cases investigated/prosecuted

- Unauthorized Practice of Law in states where not admitted (RPC 1-300(B) – A lawyer shall not practice law (or hold himself out as able to practice) where to do so would be in violation of the regulations of the profession in that jurisdiction
- Illegal/Unconscionable fees (RPC 4-200(A) – A lawyer should be wary of accepting fees for little or no work.

Ethical violations involved in cases investigated/prosecuted

- Moral Turpitude (B&P 6106) – many times a scheme to defraud, dishonesty and or corruption – misrepresentations
- Harassing, Frivolous litigation (RPC 3-200) – a lawyer may not without good cause file a lawsuit or motions in a lawsuit that are simply intended to delay or impede a foreclosure sale.

Fact patterns we've found in our investigations

- Craig's list
- Payment per file
- Monthly salary as in-house counsel but retainers in attorney's name
- Loan mod company found on internet

Fact patterns we've found in our investigations

CLIENT SIGNS UP AND PAYS UPFRONT FEES

- Client calls for status updates, told by non-attorneys everything is fine, then gets foreclosure notice, and finds out that lender never heard of attorney, loan mod company or received any application for loan mod.

Fact patterns we've found in our investigations

CLIENT SECURITY FUND

- \$10 of your dues funds CSF
- Typically CSF received about 1000 applications per year
- 2009 – received unprecedented 3000 – most of increase due to loan mods
- 2010 – received 3800

Fact patterns we've found in our investigations

- Basically – an attorney has to be disciplined before CSF can do its investigation to determine whether the client qualifies for CSF payment.

Ethical attorneys practicing loan mod

- No advance fees
- Qualify potential client before accepting
 - Financials
 - Employment
 - Hardship – temporary/permanent
- Oversee all work being done in office

Ethical attorneys practicing loan mod

- Requires more than just sending financials and demand letter to lender
- Our expert tells us it requires at least 40-60 hours, that the squeaky wheel gets the grease
- Does NOT promise outcome

MCLE Self-Study Article: Loan Modification 101 - Everything You Always Wanted to Know About Loan Modification but Were Afraid to Ask

(Check the end of this article for information on how to access 1.0 self-study credits.)

By Suzan Anderson
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SUZAN ANDERSON

MS. ANDERSON JOINED THE STATE BAR IN 1996. SINCE MARCH 2009 SHE HAS BEEN SUPERVISOR OF THE STATE BAR'S SPECIAL TEAM ON LOAN MODIFICATION FRAUD THAT HAS SUCCESSFULLY OBTAINED DISCIPLINE OF AT LEAST TWENTY ATTORNEYS.

I. INTRODUCTION

Early in 2008, the economy imploded, and the housing market dried up. Thousands of California homeowners found themselves owing more than their homes were worth and unable to make their monthly mortgage payments. In the first three quarters of 2008, more than 190,000 Californians lost their homes to foreclosure, compared to just 87,000 in all of 2007.¹ During that same period, lenders recorded nearly 330,000 notices of default — the first step of a non-judicial foreclosure or trustee sale — on California homes. The actual foreclosure process typically takes four to six months to complete.² This increase in defaults corresponds to significantly more foreclosures. Based on thousands of investigations into loan modification fraud,³ the State Bar learned that many distressed homeowners had attempted to address their problem with lenders directly but were unsuccessful. This left homeowners feeling desperate. Although the vast majority of these homeowners did not need the help of a lawyer to solve their problems, many were swayed by radio, television, internet, direct mail advertisements, and marketing calls telling them that a lawyer could help. These advertisements and sales calls offered distressed homeowners various guarantees, including a 99% success rate with loan modifications, a full money back guarantee if their loan modification was unsuccessful, and loan modifications accomplished “while you wait.”

The desperate consumers too often took the bait, with disastrous consequences.

II. WHY ATTORNEYS BECAME VALUABLE TO LOAN MODIFICATION COMPANIES

Then existing laws made attorneys attractive to loan modification companies that wanted to earn money from offering loan modification services. California Civil Code section 2945 *et seq.*, the California Foreclosure Consultant Act (the “Act”), regulates mortgage foreclosure consultants. The Act was originally intended to protect homeowners from

unscrupulous persons who were charging desperate homeowners excessive fees while performing little or no services.⁴ The Act broadly defines a foreclosure consultant as anyone who:

- (a) assists or offers to assist homeowners in foreclosure;
- (b) by contacting the creditor on behalf of the homeowner for any purpose;
- (c) including, without limitation, to stop or postpone a foreclosure sale or to negotiate terms of a modification of a mortgage loan.

Section 2945.4(a) prohibits foreclosure consultants from collecting a fee for any services until after the services have been fully performed. This and other protections under the Act cannot be waived.⁵ However *former* Section 2945.1(b) *exempted* attorneys licensed to practice in California from the definition of foreclosure consultant. Until the passage of Senate Bill 94 on October 11, 2009, attorneys licensed to practice law in California could collect advance fees for performing the work of foreclosure consultants.⁶ Under former section 2945, marketing a loan modification enterprise as a law office not only allowed the marketer to collect an advance fee, but it added credibility to loan modification companies who were using attorneys as a front. This, in turn helped their sales.

III. SCHEMES USED BY LOAN MODIFICATION COMPANIES

State Bar investigations have confirmed that loan modification companies, which are foreclosure consultants under the Act, sought out attorneys to advertise modification services to the public, even going so far as to advertise for the attorneys on Internet websites such as craigslist (www.craigslist.org). Five attorneys interviewed during investigations into

loan modification misconduct admitted to being recruited via craigslist. State Bar investigators have also found multiple advertisements on craigslist seeking attorneys for established loan modification companies, and some of those advertisements reassured would-be applying attorneys that *no special knowledge or skill* was required beyond possession of a license to practice law.

State Bar investigations have uncovered several schemes used by so-called foreclosure consultants to advertise themselves as law offices, attorneys, or “attorney-backed” organizations. In one scheme, the loan modification company pays an attorney a per file fee in exchange for allowing the loan modification company to use the attorney’s name, retainer agreement, and client trust account. One particular investigation revealed that the loan modification company had actually contracted with two attorneys to act consecutively in representing a client. The first attorney was paid a \$150 fee per file, while the second attorney received a \$250 fee per file. However, the second attorney did not perform *any* legal services at all.

In yet another scheme, the loan modification company provided all financial support, office space, and staff to set up the attorney’s “law practice” for loan modifications. One investigation revealed that the attorney actually had no financial stake whatsoever in his purported “law practice.” Everything, including payment of the attorney’s salary, was handled by the loan modification company. Some of these operations were small, but others were large, boiler room-type call centers set up in warehouses with young sales people soliciting clients and attempting to collect the money the same day. Typically, these operations collected between \$1,500 and \$5,000 from each client. The sales people worked off scripts — making promises, for example, that the attorney would reduce principal or would reduce interest rates to 2%, and that the attorney had a 98% success rate. Many salespeople promised that if the attorney could not get the client a loan modification for any reason, the client’s fee would be refunded. All too often, no work was done on the loan modifications, and the clients’ homes were foreclosed upon, compounding the homeowner’s financial woes.

In yet a third scheme, attorneys offered their clients “forensic audits.” These audits purported to use a software program to identify alleged violations of the Federal Truth in Lending Act (“TILA”) within loan documents.⁷ One office promised that if violations were found, the attorney would

send a demand letter to the lender stating that a violation had been discovered and offering a settlement in the form of a loan restructure. The letter would include a statement that if the offer was not accepted, the loan would be rescinded according to law. What the attorney did not tell the client is that under rescission, the client might have to give the property back to the lender. One attorney even mischaracterized rescission, stating that the client would end up owning the property without a mortgage. These “forensic audits,” even if performed, had no value to clients. The controlling authority in this jurisdiction holds that a mortgagee’s security interest is not automatically voided when a mortgagor gives notice that he or she is exercising the right to rescind the loan based upon alleged TILA violations. Rather, before a court will order rescission, the court has the discretion to (and often does) require that the mortgagor provide proof of their ability to repay loan proceeds if the rescission is granted.⁸ Clients were not informed of this, and thus were ignorant of the fact that they would have to repay the loan proceeds as a condition of rescission.

One may ask why so many were duped by these schemes and paid out money for advertised outcomes that must have seemed too good to be true. The answer: these consumers were desperate, and they were not schooled in the laws that applied in this area. They believed that if an expert — in the form of an attorney — made the promise, it should be believed.

IV. THE STATE BAR’S RESPONSE

In November 2008, the State Bar received its first complaint that a consumer had paid his or her lawyer for loan modification services that were not performed. By the end of 2008, nine additional complaints had been filed with the State Bar, and by March of 2009, the State Bar had received more than 100 complaints claiming that attorneys had offered loan modification services for an advance fee but had not performed services. That is when the State Bar’s Loan Modification Team was formed. Initially, the team consisted of four attorneys and six investigators who pursued loan modification scams and other matters. By September 2009, the volume of complaints had risen to several thousand; another attorney and two more investigators then were added to the team. Since September 2009, the Loan Modification Team has focused exclusively upon complaints of ethical misconduct connected with loan modification and other foreclosure-prevention activities.

The Loan Modification Team has coordinated with other state and federal agencies to target such unethical practices,

including with the California Department of Real Estate, the Department of Justice, the Federal Trade Commission, the California Attorney General's Office, and local District Attorneys and Law Enforcement. Each of these agencies has created working groups to target these unethical practices.

By February 2009, the State Bar Committee on Professional Responsibility and Competence ("COPRAC") issued an ethics alert warning the state's lawyers of the potential for discipline should they engage in unethical loan modification work. The alert included warnings about arrangements with non-lawyers that might violate ethical obligations. "Much of this conduct — accepting referral fees, fee splitting, forming a business with a non-lawyer that performs legal services, helping a non-lawyer engage in the unauthorized practice of law, and filing frivolous lawsuits — violates the Rules of Professional Conduct or ethics rules set forth in the Business and Professions Code," the alert said. COPRAC specified six rules of particular note:

1. A California lawyer may not pay a referral or marketing fee to a foreclosure consultant or other person for referring distressed homeowners to the lawyer;⁹
2. A California lawyer may not directly or indirectly split any attorneys' fees that the lawyer earns from a distressed homeowner client with a foreclosure consultant or any other non-lawyer;¹⁰
3. A California lawyer may not aid a foreclosure consultant or anyone else in the unauthorized practice of law. A California lawyer may not form a partnership or joint venture with a foreclosure consultant or other non-lawyer if any of the activities of the business would involve providing legal services. A California lawyer may not, under the guise of serving as in-house counsel for a foreclosure consultancy business, perform legal services for a distressed homeowner;¹¹
4. A California lawyer may not contact (in person or by telephone) a distressed homeowner referred to the lawyer by a foreclosure consultant or someone else, unless the lawyer has a family or prior professional relationship with the homeowner. A California lawyer, however, may write to a distressed homeowner who is a prospective client;¹²

5. A California lawyer may not, without good cause, file a lawsuit or motions in a lawsuit that are simply intended to delay or impede a foreclosure sale;¹³ and
6. A California lawyer may not intentionally or recklessly fail to perform legal services.¹⁴

The full alert may be found at <http://ethics.calbar.ca.gov>.

Thereafter, in July 2009, the Loan Modification Team participated in *Operation Loan Lies* with the Federal Trade Commission, the United States Attorneys Office for the Central District of California, the California Department of Justice, the California Department of Real Estate, and other states in announcing actions taken against loan modification companies, foreclosure consultants, and attorneys involved in related unscrupulous business practices.

V. THE LEGISLATIVE RESPONSE

On the legislative front, in October 11, 2009, the California Legislature adopted, and the Governor signed SB 94, which makes it immediately illegal for attorneys to collect advance fees for representation in loan modification matters. Among other provisions, new Civil Code section 2944.7(a)(1) provides:

Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person had fully performed each and every service the person contracted to perform or represented that he or she would perform.

Under the new law, it is now illegal to collect an advance fee, place that fee into a client trust account, or draw against that fee until services have been fully performed. It is also illegal to ask for or collect a "retainer." Civil Code section 2944.7(b) provides that a violation is a public offense punishable by a fine not to exceed \$10,000, by imprisonment in county jail for up to one year, or by both fine and imprisonment. This statute applies to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.¹⁵

The legislation also requires that before a regulated consultant enters into a fee agreement with the borrower, the con-

sultant must provide separate written notice in not less than 14-point type as follows:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development is available from your local HUD office or by visiting www.hud.gov. CAL. CIV. CODE § 2944.6(a).

Civil Code section 2944.6(b) also provides that if loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Civil Code section 1632, a translated copy of the required statement must be provided to the borrower in that foreign language.¹⁶

Additionally any attorney who violates Civil Code section 2944.6 or 2944.7¹⁷ may be disciplined under Business and Professions Code section 6103.3. As set forth in statute:

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: With foreclosures at historic levels, foreclosure rescue scams are pervasive and rampant. In order to prevent financially stressed homeowners from being victimized and to provide them with needed protection at the earliest possible time, it is necessary that this act take effect immediately.¹⁸

The State Bar has begun to charge this violation in cases where investigations have shown violations of Civil Code sections 2944.6 or 2944.7.

VI. STATE BAR DISCIPLINARY ACTIONS

The State Bar generally uses two principal methods for bringing charges against an attorney in State Bar Court. The most common means of initiating a prosecution begins with a Notice of Disciplinary Charges (“NDC”). The other avenue

— and the one used by the Bar’s Loan Modification Team — begins with a Petition for Inactive Enrollment pursuant to Business and Professions Code section 6007(c) (“6007(c) Petition”). In both, the State Bar is required to prove violations of ethical rules by clear and convincing evidence. Since the loan modification team begins with a 6007(c) Petition, we address that provision first.

A. Petition for Inactive Enrollment

Business and Professions Code section 6007(c)(1) provides, “[T]he involuntary inactive enrollment of an attorney may be ordered upon a finding that the attorney’s conduct poses a substantial threat of harm to the interests of the attorney’s clients or to the public...” To grant such a petition, the State Bar Court must find the following: (1) the attorney has caused or is causing substantial harm to his or her clients or the public; (2) the attorney’s clients or the public will suffer more if the petition is denied than the attorney will if the petition is granted or there is a likelihood the harm will continue; and (3) there is a reasonable probability that the State Bar will prevail on the merits.¹⁹

To initiate a 6007(c) proceeding, the State Bar files a verified application with supporting documents that set forth with particularity facts showing that the attorney’s conduct poses a substantial threat of harm to his or her clients or the public. The attorney then has a chance to respond, and a hearing is scheduled on an expedited basis. All evidence is received by way of declaration, request for judicial notice, and transcripts, all without testimony or cross-examination. The State Bar Court renders a decision (including findings of fact) and the decision is filed no more than ten court days after the hearing. If the Court grants the 6007(c) Petition, the attorney is placed on involuntary inactive status, and the State Bar then has 45 days within which to file the NDC.²⁰

Since July 2009, the Loan Modification Team has filed ten 6007(c) Petitions, and each one has been granted by the State Bar Court, meaning that all ten attorneys have been placed on involuntary inactive status. Of these ten, two resigned from the practice of law with the disciplinary charges pending. Three other attorneys stipulated to disbarment after they were placed on involuntary inactive enrollment. NDC have been filed against the other five in State Bar Court and remain pending. The 6007(c) Petition has been a valuable tool for the Loan Modification Team in stopping fraud committed by lawyers in the loan modification arena.

B. Notice of Disciplinary Charges

In State Bar proceedings, the NDC initiates formal proceedings against an attorney. The NDC is the State Bar's charging document. The NDC cites the statutes, rules, or court orders alleged to have been violated or to warrant the action proposed, contains a statement of facts constituting the alleged violations in sufficient detail to permit the preparation of a defense, and relates the alleged facts to specific statutes, rules, or court orders alleged to have been violated or to warrant the action proposed.²¹

The State Bar may file an NDC if it finds that there is reasonable cause to believe that a member has committed a violation of the State Bar Act or Rules of Professional Conduct, and the member has received a fair, adequate, and reasonable opportunity to deny or explain the matters that are the subject of the NDC.²²

Then and only then is the NDC filed with the State Bar Court. The NDC is not predicated on the filing or granting of a 6007(c) Petition, but it can be filed whenever the conditions above are met.

The Loan Modification Team has filed eleven NDCs against attorneys involved in the loan modification business: these include not only the attorneys in the 6007(c) proceedings, but others as well, even where a 6007(c) Petition was not brought. These matters have all been set for trial or are pending settlement.

C. Resignations with Charges Pending

In addition to the above, and without having filed charges in State Bar Court, the Loan Modification Team has obtained another ten resignations with charges pending.

Under applicable rules, "[a] member of the State Bar against whom disciplinary charges are pending may tender a written resignation from membership in the State Bar and relinquishment of the right to practice law..."²³ The procedures for resignations with charges pending are governed by Rules 650, *et seq.*, of the Rules of Procedure of the State Bar of California.

Although these resignations are pending Supreme Court approval, each attorney has been placed on inactive status and may not practice law in the State of California.²⁴

D. Stipulated Disbarments

Stipulated disbarments are another tool used by the Loan Modification Team. A stipulated disbarment requires an attor-

ney to admit to the specified misconduct. The stipulation is then filed with the State Bar Court. The Loan Modification Team has obtained two stipulated disbarments in addition to those of the 6007(c) proceedings. Stipulations are governed by rules 133 and 134 of the Rules of Procedure of the State Bar of California. These stipulations have been approved by the State Bar Court and are now pending approval with the Supreme Court.

E. Other Settlements

The Loan Modification Team has also worked out settlements involving discipline of less than disbarment where an attorney's misconduct did not warrant disbarment.

VII. CLIENT SECURITY FUND

The Client Security Fund of the State Bar of California was established by the Board of Governors in recognition of the fact that the practice of law is not a commercial enterprise but an essential public profession devoted to serving the public under the rules and regulations in place to provide honest representation in all matters. In recognition of the fact that a dishonest act by an attorney in violation of the rules and regulations may result in losses to an attorney's client, the State Bar has determined that in addition to its disciplinary duties, as part of its public service, the Bar should make a voluntary effort to alleviate those specific pecuniary or property losses that result from dishonest conduct of an active member of the State Bar.²⁵

To qualify for reimbursement from the Client Security Fund, an aggrieved applicant must establish a loss of property or money that came into the hands of the attorney and that was caused by the dishonest conduct of the attorney.²⁶ There is a limit on the amount of reimbursement: for losses after March 4, 1972 but before January 1, 1982, the maximum allowable payment is \$25,000, and for losses occurring after January 1, 1982, the maximum allowable payment is \$50,000.²⁷

Dishonest conduct or acts involve: (1) wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money or property; (2) refusal to refund an unearned fee when the lawyer performed no work or such an insignificant amount of services of those that the lawyer agreed to perform; (3) borrowing money without the intent or ability to repay; (4) obtaining money from a client for an investment that was not made; and (5) an act of intentional dishonesty or deceit by a

lawyer that proximately leads to the loss of money or property.²⁸

The Client Security Fund is supported by a \$40 assessment in every active lawyer's annual membership fee, and \$10 from every inactive lawyer. In 2008, Client Security Fund received a total of 825 applications for an award. In 2009, that number more than tripled: an unprecedented 3,028 people applied for assistance, the vast majority being victims of improper loan modification activities by California lawyers. Claims last year totaled almost \$20 million. The highest number of applications for assistance — 56.9% — was in the "unearned fee" category.

VIII. THE ETHICAL LOAN MODIFICATION ATTORNEYS

Although the number of unethical attorneys is alarmingly high in the area of loan modification legal practice, the majority of lawyers in real estate law are ethical, honest practitioners. When working on loan modification matters, it is best to be aware of the following:

- * Do not accept an advanced fee.
- * Qualify potential clients before taking on their case. Ascertain their employment status, check their financials, and determine if the potential client may be eligible for hardship status.
- * Oversee all work. Do not farm out legal work to non-lawyers.
- * Know how much work is required for a particular case. You may have to perform a detailed financial analysis of the client. You may have to make numerous contacts with the lender. You may have to review dozens of documents. All of those tasks take time and cost money.
- * Do not guarantee a particular outcome.

Consumers have numerous resources to consult in order to avoid becoming victims of unethical attorneys and unsavory loan modifications consultants. The State Bar offers a pamphlet entitled *What Can I Do If I Can't Pay My Debts?*, available at <http://www.calbar.ca.gov/Public/Pamphlets/Debts.aspx>. Foreclosure assistance is available to consumers at www.foreclosureinfoca.org. The State Bar press releases announcing actions taken against unethical attorneys are available at <http://www.calbar.ca.gov/AboutUs/News.aspx>.

Two other websites available for consumers on how to avoid real estate fraud are: <http://ag.ca.gov/loanmod/index.php>, created by Attorney General Jerry Brown, and http://www.dre.ca.gov/cons_adv_fees_alert.html, created by the Department of Real Estate. ■



This article is available as an online self-study test.

Visit:

***www.calbar.org/self-study
for more information.***

ENDNOTES

- 1 See Reports on California Foreclosure Activity issued by DataQuick Information System, available at <http://www.dqnews.com/News/California/CA-Foreclosures>.
- 2 *Id.*
- 3 Rules of Procedure of the State Bar of California, Rules 2301 and 2312.
- 4 The Act was amended by the California Legislature in 1980, 2004, and 2008.
- 5 Cal. Civ. Code § 2945.5.
- 6 SB 94 has been codified at Cal. Civ. Code § 2944.7.
- 7 15 U.S.C. 1601, *et seq.*
- 8 *Palmer v. Wilson*, 502 F.2d 860 (9th Cir. 1974) and *LaGrone v. Johnson*, 534 F.2d 1360, 1362 (9th Cir. 1976) ("We conclude that the District court erred in not conditioning rescission on the tender of the net amounts advanced by the Johnsons") and continuing with *Yanamoto v. Bank of NY*, 329 F.3d 1167 (9th Cir. 2003). See also, *Santos v. US Bank*, 2010 WL 2218803 (E.D. Cal 2010) stating that "Rescission is an empty remedy without plaintiffs' ability to tender the principal of the loan (less interest, finance charges, etc.)"
- 9 *E.g.*, California Rules of Professional Conduct, Rule 1-320(B) ("A member shall not compensate, give, or promise anything of value to a person or entity for the

purpose of recommending or securing employment of the member of member's law firm by a client..."); *see also* Cal. Bus. & Prof. Code §§ 6151 and 6152 (prohibiting running and capping); Cal. Bus. & Prof. Code § 6155 ("[N]o lawyer shall accept a referral of such potential clients" from any type of referral service unless certain conditions are met, including registration of the referral service with the State Bar.). California lawyers should be particularly mindful of the rules prohibiting the payment of referral fees if and when they are approached by a foreclosure consultant. A foreclosure consultant may be tempted to propose that a lawyer pay the consultant a fee in exchange for referring a homeowner client to circumvent Cal. Civ. Code § 2945.4(a), which prohibits a foreclosure consultant from collecting a fee from a distressed homeowner until the consultant's services have been completed. As noted above, a lawyer may not compensate another for a client referral.

- 10 *See, e.g.*, California Rules of Professional Conduct, Rule 1-320(A) ("Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer ..."); *In the Matter of Francis E. Jones, III*, 2 Cal. State Bar Ct. Rptr. 411 (Review Dep't 1993) (lawyer suspended and placed on probation, for *inter alia* paying an insurance agent one quarter of client fees); *In the Matter of Robert B. Scapa and Michael S. Brown*, 2 Cal. State Bar Ct. Rptr. 635 (Review Dep't 1993) (lawyers suspended and placed on probation, *inter alia*, for paying ex-salesman, ex-police officer, and other non-lawyers a portion of fees generated from settlements for clients identified by them); *In the Matter of Lawrence Crawford Bragg*, 3 Cal. State Bar Ct. Rptr. 615 (Review Dep't 1997) (lawyer aided insurance adjuster, who evaluated whether to accept clients for lawyer, negotiated and settled pre-litigation claims with insurers, and occasionally filed lawsuits in lawyer's name, in unauthorized practice of law); *compare* Cal. State Bar Formal Opn. No. 1987-91 (insurance company's "captive" law firm not engaged in fee splitting because no legal fees paid by insureds); California Rules of Professional Conduct, Rule 2-200(A) & (B) (permitting lawyers, under certain circumstances, to split fees with another lawyer).
- 11 *See, e.g.*, California Rules of Professional Conduct, Rule 1-300(A) ("A member shall not aid any person or entity in the unauthorized practice of law."); California Rules of Professional Conduct, Rule 1-310 ("A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law."); *see also* L.A. County Bar Ass'n Formal Opn. No. 510 (fee sharing with financial planning

company); *In re Carlos*, 227 B.R. 535, 538-39 (Bankr. C.D. Cal. 1998) (paralegal engaged in unauthorized practice of law by negotiating reaffirmation agreements); *In the Matter of Francis E. Jones, III*, 2 Cal. State Bar Ct. Rptr. 411 (lawyer suspended and placed on probation, for *inter alia* engaging in legal business with insurance agent); *In the Matter of Robert B. Scapa and Michael S. Brown*, 2 Cal. State Bar Ct. Rptr. 635 (lawyers suspended and placed on probation, *inter alia*, for opening office staffed solely by non-lawyers who explained retainer agreements and fee arrangements to prospective clients); *In the Matter of Lawrence Crawford Bragg, supra*, 3 Cal. State Bar Ct. Rptr. 615 (lawyer aided insurance adjuster, who evaluated whether to accept clients for lawyer, negotiated and settled pre-litigation claims with insurers, and occasionally filed lawsuits in lawyer's name, in unauthorized practice of law); *compare* Cal. State Bar Formal Opn. No. 1987-91 (insurance company's "captive" law firm not aiding unauthorized practice of law because "captive" law firm was independent); *Gafcon, Inc. v. Ponsor & Associates*, 98 Cal. App. 4th 130 (2002) (same). Thus, although a foreclosure consultant business, as any business, may hire in-house counsel to provide legal services for the business, such in-house counsel may not ethically provide legal services for distressed homeowners (the business's clients) either directly or through the guise of approving loan modification documentation for the business.

- 12 *See, e.g.*, California Rules of Professional Conduct, Rule 1-400(C) ("A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship..."); California Rules of Professional Conduct, Rule 1-400(B) ("For purposes of this rule, a 'solicitation' means any communications: (1) concerning the availability for professional employment of a member or a law firm...and (2) which is; (a) delivered in person or by telephone..."). Thus, a lawyer generally may not call or show up at the doorstep of a potential client with whom the lawyer does not already have a prior relationship. The lawyer may, however, write, fax, or e-mail such a potential client. California Rules of Professional Conduct, rule 1-400(B) imposes various restrictions on the form and content of lawyer communications and solicitations. *See, e.g.*, California Rules of Professional Conduct, Rule 1-400(D)(1), (2) & (3) (prohibiting lawyer communications or solicitations that contain untrue facts or mislead); California Rules of Professional Conduct, Rule 1-400, standard 5 (setting forth requirements for law firm brochures, newsletters, recent legal development advisories, and similar materials

- that are mailed); *see also* *Shapera v. Kentucky Bar Ass'n*, 486 U.S. 466 (1988) (finding it unconstitutional for a state to ban a lawyer from soliciting legal business through truthful and non-deceptive mailing directed to homeowners facing foreclosure, but holding such communications could be subject to state regulation); *see also* Cal. State Bar Formal Opn No. 1995-142 (ethical restrictions on direct mail marketing of legal services).
- 13 *See, e.g.*, California Rules of Professional Conduct, Rule 3-200 (“A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is (A) to bring an action...without probable cause and for the purpose of harassing...any person; or (B) to present a claim or defense in litigation that is not warranted...”); Cal. Bus. & Prof. Code § 6068(c), (d), & (g) (duty of lawyer to assert legal and just causes only, not to mislead court, and not to encourage commencement of continuance of action “from any corrupt motive or passion or interest”).
- 14 *See, e.g.*, California Rules of Professional Conduct, Rule 3-110(A) (“A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.”); *see also* Cal. Bus. & Prof. Code § 6450 (permissible and prohibited activities of paralegals); *In re Ivan O.B. Morse*, 11 Cal. 4th 184 (1995) (lawyer suspended for incompetence in connection with mass mailing offering homeowners assistance in filing homestead declarations); *In the Matter of Robert B. Scapa and Michael S. Brown*, 2 Cal. State Bar Ct. Rptr. 635 (lawyers suspended and placed on probation for opening office staffed solely by secretaries and paralegals).
- 15 *See* Cal. Civ. Code § 2944.7(d).
- 16 The languages of Cal. Civ. Code § 1632 are Spanish, Chinese, Tagalog, Vietnamese, and Korean.
- 17 This section was added by S.B. 94, 2009 Leg., reg. sess. (Cal. 2009), operative October 11, 2009.
- 18 S.B. 94, 2009 Leg., Reg. Sess. (Cal. 2009).
- 19 Cal. Bus. & Prof. Code § 6007(c)(2).
- 20 Rules of Procedure of the State Bar of California, Rules 460 – 482.
- 21 *Id.* Rule 101(b).
- 22 *Id.* Rule 2604.
- 23 California Rules of Court, Rule 9.21(a).
- 24 California Rules of Court, Rule 9.21(a).
- 25 Client Security Fund was established pursuant to Cal. Bus. & Prof. Code § 6140.5. Rules of Procedure for Client Security Fund Matters, Rule 1.
- 26 Rules of Procedure of the Client Security Fund, Rule 2.
- 27 *Id.* Rule 4(c).
- 28 *Id.* Rule 6(a)-(e).

The State Bar of California
Senate Bill No. 94: Prohibition on Advance Fees; and Required Notice
FAQs

On October 11, 2009, SB 94 (Calderon) was chaptered. The legislation took effect immediately. The full text of the legislation can be found on the Official California Legislative Information Web site.

Prohibition against Collection of Advance Fees

The legislation prohibits the collection of advance fees for loan modifications, as specified. Among other provisions, new Civil Code Section 2944.7(a)(1) provides as follows:

“Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.”

Civil Code Section 2944.7(d) provides that Section 2944.7 applies only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Under new Business and Professions Code Section 6106.3(a), it constitutes cause for the imposition of discipline of an attorney for an attorney to engage in any conduct in violation of Civil Code Section 2944.7.

The State Bar’s interpretation of the new statutory language, in response to the three most common questions it has received, is set forth below. The State Bar’s Office of the Chief Trial Counsel will enforce the statutory language consistent with this interpretation.

1. Is Civil Code Section 2944.7(a)(1) retroactive?

Agreements entered into and advance fees collected prior to October 11, 2009 are not affected. Advance fees based on agreements entered into prior to October 11, 2009, but collected after October 11, 2009, must be fully refunded.

2. *Is it a violation of Civil Code Section 2944.7(a)(1) to collect an advance fee, place that fee into a client trust account, and not draw against that fee until the services have been fully performed?*

Yes. The statutory language of the prohibition uses the word “receive” and the plain meaning of that term is broad enough to encompass a lawyer’s receipt of advance fees into a trust account. Civil Code Section 2944.7(a)(1) makes it unlawful to “collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform,” whether the compensation is placed into the lawyer’s client trust account, general account or any other type of account.

3. *Is it a violation of Civil Code Section 2944.7(a)(1) to ask for or collect a “retainer”?*

Civil Code Section 2944.7(a)(1) makes it unlawful to “[c]laim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform,” even if that compensation is called a “retainer.”

Required Notice to Borrower

The legislation also requires that specified notice be provided to the borrower, as a separate statement, prior to entering into any fee agreement with the borrower. Among other provisions, new Civil Code Section 2944.6(a) provides as follows:

“Notwithstanding any other provision of law, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.”

Civil Code Section 2944.6(b) provides that if loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Civil Code Section 1632, a translated copy of the required statement must be provided to the borrower in that foreign language.

Civil Code Section 2944.6(e) provides that Section 2944.6 applies only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Under new Business and Professions Code Section 6106.3(a), it constitutes cause for the imposition of discipline of an attorney for an attorney to engage in any conduct in violation of Civil Code Section 2944.6.



ETHICS HOTLINER

▪ KEEPING AN EYE ON ETHICS ▪

ETHICS ALERT

Legal Services to Distressed Homeowners and Foreclosure Consultants on Loan Modifications

Committee on Professional Responsibility and Conduct
(February 2, 2009)

You have all read and heard about the residential mortgage crisis in California. In 2007, roughly 84,000 California homeowners lost their homes in foreclosure.¹ Through the first three quarters of 2008 alone, that number increased to over 190,000. During that same period, lenders recorded nearly 330,000 notices of default on California home mortgages. Recording a notice of default is the first step of a non-judicial foreclosure or trustee sale, the most common process in California, which typically takes four to six months or more. In other words, the crisis seems far from over.

Seeing a business opportunity in this crisis, “foreclosure consultants” purport to offer distressed homeowners assistance in assessing their options and/or negotiating loan modifications with their lenders.² According to the California Legislature,

These foreclosure consultants, however, often charge high fees, the payment of which is often secured by a deed of trust on the residence to be saved, and perform no service or essentially a worthless service. Homeowners, relying on the foreclosure consultants’ promises of help, take no other action, are diverted from lawful businesses which could render beneficial services, and often lose their homes, sometimes to the foreclosure consultants who purchase homes at a fraction of their value before the sale. Vulnerable homeowners are increasingly

¹ See Reports on California Foreclosure Activity issued by DataQuick Information Systems, available at <http://www.dqnews.com/News/California/CA-Foreclosures/RRFor080422.aspx>, <http://www.dqnews.com/News/California/CA-Foreclosures/RRFor080722.aspx>; and <http://www.dqnews.com/News/California/CA-Foreclosures/RRFor081023.aspx>.

² Civil Code section 2945(a) defines “foreclosure consultant” as any person who performs for compensation certain services for a homeowner or makes any solicitation, representation, or offer to do so. The services include, for example, stopping or postponing a foreclosure sale, obtaining forbearance from any beneficiary or mortgagee, obtaining reinstatement of a loan obligation, obtaining an extension for reinstating a loan obligation, obtaining a waiver of an acceleration clause, assisting the owner in getting a loan, and saving the owner’s residence from foreclosure. Civ. Code § 2945.1(a)(1)-(6) & (8). Section 2945.1(b) excludes from the definition of “foreclosure consultant” certain types of people, including generally lawyers licensed in California. See Civ. Code § 2945.1(b)(1).

- A California lawyer may not contact in person or by telephone a distressed homeowner referred to the lawyer by a foreclosure consultant or someone else unless the lawyer has a family or prior professional relationship with the homeowner. Nor may a lawyer direct another to do so on the lawyer's behalf. A lawyer, however, may write to a distressed homeowner who is a prospective client.¹³
- A California lawyer may not without good cause file a lawsuit or motions in a lawsuit that are simply intended to delay or impede a foreclosure sale.¹⁴
- A lawyer may not intentionally or recklessly fail to perform legal services with competence.¹⁵
- A lawyer should be wary of accepting fees for little or no work.¹⁶

Cal.App.4th 1388 [120 Cal.Rptr.2d 392] (same). Thus, although a foreclosure consultant business, as any business, may hire in-house counsel to provide legal services for the business, such in-house counsel could not ethically provide legal services for distressed homeowners (the business's clients) either directly or through the guise of approving loan modification documentation for the business.

¹³ See, e.g., Cal. Rules of Prof. Conduct rule 1-400(C) ("A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship..."); Cal. Rules of Prof. Conduct rule 1-400(B) ("For purposes of this rule, a 'solicitation' means any communications: (1) Concerning the availability for professional employment of a member or a law firm...; and (2) Which is; (a) delivered in person or by telephone ..."). Thus, a lawyer generally may not call or show up at the doorstep of a potential client with whom the lawyer does not already have a prior relationship. The lawyer may, however, write, fax or e-mail such a potential client. Rule 1-400 of the Rules of Professional Conduct imposes various restrictions on the form and content of lawyer communications and solicitations. See, e.g., Cal. Rules of Prof. Conduct rule 1-400(D)(1), (2) & (3) (prohibiting lawyer communications or solicitations that contain untrue facts or mislead); Cal. Rules of Prof. Conduct rule 1-400, standard 5 (setting forth requirements for law firm brochures, newsletters, recent legal development advisories, and similar materials that are mailed); see also Shapiro v. Kentucky Bar Assoc. (1988) 486 U.S. 466 [108 S.Ct. 1916] (unconstitutional for state to ban lawyer from soliciting legal business through truthful and non-deceptive mailing directed to homeowners facing foreclosure, but such communications could be subject to state regulation); see also Cal. State Bar Formal Opn. No. 1995-142 (ethical restrictions on direct mail marketing of legal services).

¹⁴ See, e.g., Cal. Rules of Prof. Conduct rule 3-200 ("A member shall not seek, accept, or continue employment if the member knows or should know that the objective of such employment is (A) To bring an action ... without probable cause and for the purpose of harassing ... any person; or (B) To present a claim or defense in litigation that is not warranted ..."); Bus. & Prof. Code § 6068(c), (d), (g) (duty of lawyer to assert legal and just causes only, not to mislead court, and not to encourage commencement or continuance of action "from any corrupt motive of passion or interest").

¹⁵ See, e.g., Cal. Rules of Prof. Conduct rule 3-110(A) ("A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."); see also Bus. & Prof. Code § 6450 (permissible and prohibited activities of paralegals); In re Ivan O. B. Morse (1995) 11 Cal.4th 184 [44 Cal.Rptr.2d 620] (lawyer suspended for, *inter alia*, incompetence in connection with mass mailing offering homeowners assistance in filing homestead declarations); In the Matter of Robert B. Scapa and Michael S. Brown, supra, 2 Cal. State Bar Ct. Rptr. 635 (lawyers suspended and placed on probation for opening office staffed solely by secretaries and paralegals).

¹⁶ See, e.g., Cal. Rules of Prof. Conduct rule 4-200(A) ("A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee."). The unconscionability of a fee is determined by multiple factors, including the amount of the fee in proportion to the value of the services performed (Cal. Rules of Prof. Conduct rule 4-200(B)(1)), and the time and labor required (Cal. Rules of Prof. Conduct rule 4-200(B)(10)).

Distressed homeowners may need legal assistance. California lawyers should be wary, however, of non-lawyers – such as foreclosure consultants – who, seeking to capitalize on the vulnerability of distressed homeowners, offer to provide distressed homeowners assistance in renegotiating their loans and/or assessing and protecting their legal rights. These non-lawyers may propose arrangements that would violate one or more of a lawyer’s ethical obligations. They may attempt to loop California lawyers into their businesses with promises of large numbers of referrals and/or “easy money,” that is, fees for the lawyer for little or no work. They may request that a lawyer pay them a referral or marketing fee. They may propose an agreement to split legal fees obtained from the distressed homeowners. They may request that the lawyer enter into a joint venture with them and a distressed homeowner. They may request that a lawyer approve loan modification documentation. They may request that a lawyer serve as the general counsel to their business in order to provide legal advice to homeowners. They may ask that the lawyer file a frivolous lawsuit on behalf of a homeowner with whom the lawyer has had little or no contact in order to buy time so that the foreclosure consultant will have more time to negotiate a loan modification directly with a homeowner’s lender. As noted above, much of this conduct – accepting referral fees, fee splitting, forming a business with a non-lawyer that performs legal services, helping a non-lawyer engage in the unauthorized practice of law, filing frivolous lawsuits – violates the Rules of Professional Conduct and/or ethics rules set forth in the Business and Professions Code. A California lawyer should consider carefully the applicable ethical rules before agreeing to participate in any such venture involving people acting as foreclosure consultants or in a similar capacity. Failure to do so may result in lawyer discipline.¹⁷

¹⁷ See, e.g., *Cincinnati Bar Ass'n v. Mullaney* (2008) 119 Ohio St.3d 412 [894 N.E.2d 1210] (lawyers disciplined for accepting customers of Foreclosure Solutions, L.L.C.); see also Cal. State Bar Formal Opn. No. 1997-148 (ethical issues, including whether lawyer-client relationship is created, that lawyer should consider when non-lawyer generates prospective clients for lawyer by marketing living trust packages); Cal. State Bar Formal Opn. No. 1995-143 (ethical issues that lawyer should consider when “medical liaison” generates prospective clients for lawyer by giving presentation to physicians).

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THE STATE BAR OF CALIFORNIA
ETHICS HOTLINE



ETHICS HOTLINER

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SUZAN J. ANDERSON
SUPERVISING TRIAL COUNSEL/STATE BAR OF CALIFORNIA
BIOGRAPHY

Ms. Anderson was admitted to the State Bar of California in 1992 and has actively practiced law since that time. She was in private practice in the areas of legal malpractice, medical malpractice and surrogacy law before joining the Office of the Chief Trial Counsel of the State Bar of California in 1996.

At the State Bar, Ms. Anderson has worked with investigators in developing cases for trial attorneys to litigate and has litigated many cases herself in State Bar Court, including major misappropriation matters, reinstatement petitions and moral character proceedings.

Ms. Anderson is one of two Supervising Trial Counsels on the State Bar's special unit on loan modification fraud consisting of eighteen investigators and seven attorneys. Since the inception of the team in March 2009, it has been successful in removing 22 attorneys from practice and filing many disciplinary matters in State Bar Court. The team is also working with many outside agencies including law enforcement, the US Attorney's Office, several District Attorneys offices, the Attorney General's office, the Department of Real Estate and the Federal Trade Commission.

Ms. Anderson also teaches State Bar Ethics School, Client Trust Account School and speaks on ethics at many conferences.

Program 99

Ethics & Loan Modification

Tom Layton has been an investigator at the State Bar of California for twelve years. Tom is currently assigned to the State Bar's Mortgage Fraud Task Force. Tom's unit has handled over 4,000 loan modification complaints, many which remain under investigation. Tom has investigated major frauds, complaints from judges, and allegations of misconduct against District Attorneys and US Attorneys.

Prior to joining the State Bar, Tom was a detective with the Los Angeles County Sheriff, working his last eight years as a narcotics detective. Tom still serves as a reserve Lieutenant with the Sheriff's Integrity Unit. Tom is the prior chair of the California Narcotic Officer's Association (Los Angeles Region) and a member of the Fraternal Order of Police

Tom possesses a Bachelors Degree in Criminal Justice from Chapman University and a Masters Degree in Organizational Leadership from Woodbury University.